

### REMARKS

Favorable reconsideration of this Application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 2-8, 10-13 and 15-16 remain pending in the present Application. Claims 2-5, 6-8, 10, 11 and 13 have been amended. Claims 15 and 16 have been added. Support for the non-cosmetic amendments can be found at least in Figs. 8-9, page 37 and on page 40, lines 2-18 of the specification. No new matter has been added.

By way of summary, the Official Action presents the following issues: Claims 2-8 and 10-13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Morito et al. (U.S. Patent No. 6,310,956, hereinafter Morito) in view of Endoh (U.S. Patent No. 4,965,680).

### REJECTION UNDER 35 U.S.C. § 103

The Official Action has rejected Claims 2-8 and 10-13 as being unpatentable over Morito in view of Endoh. The Official Action cites Morito as disclosing all of the Applicants' claim limitations with the exception of the use of an International Standard Recording Code (ISRC). The Official Action cites Endoh as disclosing this more detailed aspect of the Applicants' invention and states it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the cited references to arrive at the Applicants' claims. Applicants respectfully traverse the rejection.

Amended Claim 2 recites, *inter alia*, an information processing method including:

... a storage step for storing information for discriminating contents duplicated in the past and temporal data as to a previous start time of duplication of said contents in the past into a database; ...

wherein the duplication of the content is prohibited when an interval of time between the current time and the previous start time of duplication of said content in the past specified by the temporal data stored in the database is less than predetermined amount of time.

Under 35 U.S.C. § 103, the differences between the prior art and the claims at issue must be correctly ascertained (*See Graham v. John Deere Co.*, 383 U.S. 1, 17, 1966). This well established rule notwithstanding, the final rejection of April 21, 2004, fails to reasonably interpret the language of the claims and the teachings and fair suggestions of the applied references, and, accordingly, fails to correctly ascertain the difference between the prior art and the claims at issue.

By way of background, copy protection systems are provided to preclude the copying of original content. For example, copy protection systems may preclude copying all together, or, limit copying to a certain number of instances. However, in such systems, original content can sometimes be manipulated to be repeatedly duplicated to acquire plural second generation copies of original content data, thus circumventing copyright laws.<sup>1</sup>

In light of at least the above deficiency in the art, the present invention is provided. With this object in mind, a brief comparison of the claimed invention, in view of the cited references, is believed to be in order.

Morito describes that recording of digital data is prevented if the time difference between the transmission time, which is embedded in the digital data, and current time is greater than a threshold value.<sup>2</sup> As shown more specifically in Fig. 7B of the reference, time information is embedded in a transmission of a transmission apparatus (20) to a recording apparatus (30). Upon receipt of the transmission, the recording apparatus may copy the data depending upon the current time as determined by the recording apparatus. In other words, a substantially contemporaneous recording is allowed for later viewing, however, duplication of a previously transmitted program for distribution is prohibited by the Morito system.<sup>3</sup>

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<sup>1</sup> Application at page 1.

<sup>2</sup> Morito at column 6, lines 42-49.

<sup>3</sup> Morito at column 6, lines 51-57.

Conversely, in an exemplary embodiment of the Applicants' invention as recited in amended Claim 2, an information processing apparatus and associated method are provided wherein the duplication of previously duplicated content is prohibited when an interval of time between a present time and the start time of the prior duplication of the content is less than a predetermined period. This feature enables the processing apparatus and associated method of the present invention to prevent mass duplication of already duplicated content.<sup>4</sup> Nowhere does Morito disclose or suggest recording a previous duplication start time.

In the last Official Communication, the Official Action stated that

Applicants' argument regarding prohibition of already duplicated data regardless of passage of time is well known in the art and described in the background of the cited reference. The examiner refers applicant to Morito's description of copy-once signals and various well-know methods of copy prevention (see columns 1 and 2, background of the invention).

Applicants respectfully point out that the claims do not recite mere copy prohibition, as outlined in the passage above. Rather, Applicants' claims recite the prohibition of copying based upon the time of the previous duplication of the targeted content. Moreover, Claims 2 and 3 have been amended to recite a "previous start time of duplication" to further clarify this point. Nowhere in the citations noted in the Official Action is there a disclosure or suggestion of prohibiting copying based upon a previous duplication start time.

The Official Action seems to take the position that copy prohibition is known in the prior art, and that this generic assertion somehow applies to Applicants' claims "regardless" of clear claim limitations addressing copying conditions. As Applicants have clearly not claimed simple copy prohibition, it seems that the claim terms reciting temporal limitations and duplication times have been ignored. Yet, Applicants note that all words in a claim must

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<sup>4</sup> Application at page 70, lines 16-20

be considered in judging the patentability of that claim against the prior art (*In re Wilson*, 165 U.S.P.Q. 495, 496 (C.C.P.A. 1970)).

Further, assuming such limitations were present in the cited references, it is well established that whenever the U.S.P.T.O. asserts the presence of an explicit or implicit teaching or suggestion in any of the references applied, “it must indicate where such a teaching or suggestion appears in the reference” (*In re Rijckgert* 28 U.S.P.Q. 2<sup>nd</sup>, 1955, 1957 (Fed. Cir. 1993)).

Simply stated, the claimed duplication start time has no relation to the transmission time of Morito. The exemplary embodiment of the Applicants’ invention is directed to avoiding duplication of previously duplicated content. In the context of the Applicants’ invention, the time at which content data is initially made available to a user (i.e., transmission time) has no bearing on the present claim language.

Likewise, as pointed out by the Applicants in a previous communication, temporal data is not embedded into the content of the exemplary embodiment but stored in a database. Indeed, such temporal data could not be embedded in the content as a duplication time cannot occur until after initial delivery of the content. Thus, such temporal data is stored in a database for updating upon further duplication. In response to this point, the Official Action stated the following:

As applicant is well aware and is well known in the art, a database is merely a file that contains two or more records with field for carrying out certain operations, i.e., searching. Therefore, applicant’s point is rather insignificant because regardless of the location, the same function is performed. However, Morito in fact addresses this option in an alternative embodiment of his invention (column 7, lines 20-35). Morito goes on to further describe that the temporal data, specifically “the predetermined threshold value of time difference, above which recording is prevented, can be stored in a ROM memory interface to a microprocessor (column 7, lines 43-54).”

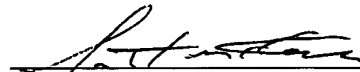
Applicants respectfully submit that the Official Action has misunderstood the Applicants' assertion. Applicants are not simply distinguishing the storage of a parameter from a data stream to a memory. Rather, Applicants point out that the transmission time of the Morito invention, is a constant value which does not change over the life of the content. Conversely, as a natural result of the recitations of the Applicants' claims, the start time of a previous duplication of a content will evolve in accordance with each duplication process as specifically recited in new Claims 15 and 16.

Endoh is not believed to address the deficiencies of Morito. That is, Endoh does not disclose or suggest the prohibition feature of the present invention or that temporal data directed to a duplication start time governing the prohibition is stored in a database. Therefore, Morito is not believed to anticipate or render obvious the subject matter defined by the present claims as amended when considered alone or in combination with Endoh.

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for allowance. An early and favorable action is therefore respectfully requested.

Respectfully submitted,

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